594/989

Department of the Treasury
Internal Revenue Service

Publication 594
(Rev. Nov. 89)

The Collection Process (Employment Tax Accounts)

Introduction

This pamphlet explains your rights and duties as a taxpayer owing a bill for Employer's Quarterly Federal Taxes and how we fulfill the legal obligation of the Service to collect the taxes. It is not intended as a precise and technical analysis of the law.

Throughout this pamphlet, these taxes will be referred to as employment taxes.

Employment taxes represent the income tax and social security tax withheld from the wages of an employee plus the employer's share of social security taxes (FICA). The withheld portion of employment taxes is referred to as "trust fund taxes."

In collecting these taxes, we distinguish between those taxpayers who reflect a sincere effort to meet their tax obligations and those taxpayers who show little or no evidence of cooperation. This distinction is made because we believe that taxpayers who are making a true effort to comply should be afforded an opportunity to resolve their delinquency, over a short period of time, if they incur no further liabilities. On the other hand, we believe that "repeater" or "chronic delinquent" trust fund cases require swift and decisive Service response for the following reasons:

1) the taxpayer is using "trust fund" monies as operating capital and thereby gains an unfair advantage over other businesses;
2) the taxpayer has been repeatedly warned and yet continues to divert the "trust fund" monies; and
3) the amount owed can escalate dramatically if the taxpayer ignores the federal tax deposit and/or filing requirements.

Liability for Unpaid Taxes

Notice and Demand. Each employment tax return filed with the Internal Revenue Service is checked for mathematical accuracy and to see whether appropriate payment has been made. If all the tax has not been paid, we will send you a bill (including tax, interest, and penalties) , which is a *notice* of tax due and a *demand* for payment. In most cases you are given 10 days from the date of the notice of tax due to pay before we may take enforced collection action. However, if we have reason to believe that collection is endangered, we may give notice and demand for immediate payment . If immediate payment is not made, enforced collection action may be taken without regard to the 10–day period normally provided. See information under **Levy** regarding Final Notice (Notice of Intent to Levy) 30–day period.

Payment Procedures

Generally you should pre–pay your taxes by using Federal Tax Deposit coupons (Form 8109). Your deposits should be made directly to the Federal Reserve Bank in your area or to any authorized financial institution. Be sure the forms show the proper identifying information:

your name,
employer's identification number,
address,
kind of tax and
period covered.

If any of the information on Form 8109 is incorrect, follow the instructions in the coupon book.

If you need more deposit forms, use the reorder form (Form 8109A) provided in the coupon book or contact any IRS office.

For additional information about the proper procedure for using Federal Tax Deposits, obtain a copy of Circular E, "Employers Tax Guide", or Notice 109, "Information About Depositing Employment and Excise Taxes," from any IRS office.

If you fail to pre–pay your tax and/or the return is filed without payment, the law provides for charging interest and penalties.

If you fail to pay over withheld taxes, we may require you to file and pay your taxes on a monthly rather than quarterly basis; or we may require you to open a special bank account and deposit the amounts required to be withheld within two banking days following the payment of wages. Any employer who fails to open such an account and/or make timely deposits, after being required to do so, may be found guilty of a misdemeanor.

Accounts should be paid promptly to keep interest and penalty charges to a minimum and to avoid possible criminal prosecution for noncompliance. Whenever you make tax payments, be sure to enclose a copy of your bill and enter your employer identification number and tax period on your check, money order, or postal note, to ensure that your payment is correctly credited to your account.

Tax Bill Contains Error. If you believe that your bill contains an error, you should immediately reply in writing to the office from which the bill was sent. You should send copies of any records with your reply which would help in correcting the error. If you are correct, we will adjust your account and ask you to pay any tax, interest, and penalty still due after the adjustment is made.

Unable to Make Full Payment. If you cannot pay your bill in full,you should pay as much as you can and write us immediately, explaining your circumstances. We may ask you to complete a Collection Information Statement so that we can review your financial condition to determine how you can pay the amount due.

If we determine that you can pay all delinquent and current taxes in full, we will ask you to do so. If you neglect or refuse to pay in full, we may take enforced collection action.

If we determine that you cannot pay both your current and delinquent taxes, but will be able to if given a reasonable amount of time, we may allow you to pay the liability through installments. If a payment cannot be made timely, notify us of the circumstances. You must pay all future taxes as they become due, file returns timely and provide supplemental financial information when requested.

During the time you are making payments, interest and penalty charges will accrue. We may file a Notice of Federal Tax Lien to secure the Government's interest until the final payment is made. We may require you to give us current information regarding your financial condition to see if your payments can be increased. If you fail to meet the terms of the agreement or fail to provide financial information when requested, the agreement may be defaulted and we may take enforced collection action without an additional Final Notice (Notice of Intent to Levy).

You have the right, unless collection is endangered, to a 30–day notification of the termination, alteration or modification of an agreement based on an IRS determination of change in financial condition.

If our financial analysis shows that you must use tax money to remain in business, no permanent cure for the delinquency could be gained through granting installment payments. Under these conditions, we must protect the interest of the Government. Enforcement measures deemed appropriate will be taken in these cases.

If your business is funded, in whole or in part, by the Small Business Administration (SBA) or a Small Business Investment Company (SBIC), you should also notify that organization about the delinquent taxes.

T 22.44/2:

Refund Offset. If you become entitled to a refund on another tax return during the time you owe unpaid taxes, we will apply the refund to the unpaid tax liability and refund the balance, if any, to you.

Bankruptcy Proceedings. If you are a debtor in an ongoing bankruptcy, do not pay this bill without first immediately contacting your IRS office. While the proceedings may not necessarily relieve you of your obligation to pay, a temporary stay of collection may be in affect.

Enforced Collection Policy

Enforced collection includes the filing of a Notice of Federal Tax Lien, the serving of a Notice of Levy, and/or the seizure and sale of your property (personal, real and/or business). We normally take these actions only after we try to contact you and give you the opportunity to pay voluntarily.

Notice of Federal Tax Lien. Once notice and demand for payment is sent and you neglect or refuse to pay the tax, a lien attaches to all your property, (e.g., house automobile) and rights to property (e.g., accounts receivable). This lien is not valid against claims of certain types of creditors until a Notice of Federal Tax Lien (lien) has been filed as a matter of public record. The filing of a notice of lien is often necessary to protect the Government's interest. It is a public notice to your creditors that the Government has a claim against all your property, including property which is acquired after the lien came into existence.

Once filed, a lien may harm your credit rating.

A Release of the Notice of Federal Tax Lien will be issued within 30 days after the tax due (including interest and other additions to the tax) if:

1) satisfied by payment or adjustment; or
2) within 30 days after acceptance of a bond guaranteeing payment of the liability.

All fees charged by the state or other jurisdiction for both filing and releasing the lien will be added to the balance you owe.

If the time during which the tax can be legally collected has expired, the notice of lien will act as an automatic Certificate of Release unless a lien refiling occurs.

You may sue the Federal government, but not IRS employees, for damages if the IRS knowingly or negligently fails to release a Notice of Federal Tax Lien when a release is warranted. If civil action is successful, you may be compensated for direct losses incurred by the IRS's inaction and the cost of litigation. The award will be reduced by the amount that you could have reasonably mitigated. All administrative appeals must be exhausted before a suit may be instituted. You have two years from the date of the action which gives rise to the claim to file a suit.

Publication 1450, Request for Release of Federal Tax Lien describes the required contents of your request.

Property subject to a Federal tax lien may be released from the effect of the lien under the following circumstances:

1) Other property subject to the lien is worth at least twice the amount of the tax and additions to tax you owe as well as other prior debts owed on the property (e.g., mortgages).
2) The IRS receives the value of the Government's lien interest in the property and the taxpayer is giving up ownership (e.g., sale of a residence).
3) The IRS determines that the Government's interest in the property is valueless and the taxpayer is giving up ownership (e.g., sale of a residence).
4) The property is being sold and there is a dispute as to who is entitled to the sale proceeds, and the sale proceeds are placed in escrow while the dispute is being resolved.

The IRS may also subordinate its lien to a junior lienor if we receive the dollar value of the interest in the property being acquired by the junior lienor (e.g., a second mortgage). We may also subordinate our lien if we believe that doing so would speed collection of the tax (e.g., a loan to harvest crop).

Subrogation. This is the substitution of one person in place of another with respect to the lawful claim of right.

There are two types of subrogation, conventional and legal. Conventional subrogation arises by contract, and legal subrogation arises by operation of law.

An example is where a taxpayer's property is encumbered by a prior mortgage, a subordinate Federal Tax Lien, and another encumbrance in third position, and the person holding the third ranking claim pays off the prior mortgage on the property. That party would then be subrogated to the rights of the prior mortgagee and be entitled to the same right of priority, (but only with respect to the claim they satisfied, not their original third ranking claim).

For assistance in requesting a discharge or subordination of Federal Tax Lien, see Publication 783, Instructions on How to Apply for a Certificate of Discharge of Property from Federal Tax Lien, or Publication 784, How to Prepare Application for Certificate of Subordination of Federal Tax Lien. You should submit a written application in duplicate to the District Director in whose district the property is located.

You should contact the IRS Office where the property is located for information concerning discharge, subordination, or subrogation of Federal Tax Lien and instructions on how to post a bond.

Administrative Appeal of the Erroneous Filing of a Notice of Lien. You may appeal the filing of a notice of federal tax lien if you believe the filing was erroneous. A filing is erroneous when one of the following conditions applies:

1) the liability was satisfied before the notice of lien was filed;
2) you were in bankruptcy and subject to the automatic stay when the lien was filed;
3) an examination assessment was improperly made; or
4) the statue of limitations for collection expired prior to filing of the notice of lien.

You may not use the administrative appeal provisions to challenge the underlying liability which generated the filing of the notice of lien. If we determine a notice of federal tax lien was erroneously filed, it will generally be released within 14 days after the determination that the lien was erroneously filed. A certificate of release of an erroneously filed notice of lien contains a statement that the notice of lien was in fact erroneously filed.

Levy. A levy is the taking of property to satisfy a tax liability. Levies can be made on either property in the hands of third parties, (accounts receivable, bank accounts, notes collectible, etc.) or in your possession (automobile, office equipment, real property, etc.).

Once served, a levy on salary or wages continues in effect until it is released, or your tax liability is satisfied or it becomes unenforceable due to lapse of time.

Generally, court authorization is not required before levy action is taken unless Collection personnel must enter into private premises to accomplish their levy action (actual seizure of property) . There are three legal requirements before levy action can be taken:

1) the tax must be owed;
2) a notice and demand for payment must have been sent to your last known address; and,
3) if payment is not made, a Final Notice (Notice of Intent to Levy) must be given to you at least 30 days in advance. Such notice may be given to you in person, left at your dwelling or usual place of business, or sent by certified or registered mail to your last known address.

If collection is endangered, we may take immediate collection action.

Jeopardy levies may occur when we waive the 10–day Notice and Demand period and/or Final Notice (Notice of Intent to Levy) 30–day period, because delay would endanger the collection of the tax. You may seek administrative and/or judicial review when a decision is made that collection is endangered. After administrative review, you may, if underlying liability is an issue in a Tax Court Case, secure its review, or the review of the United States District Court. All other cases will be heard in United States District Court.

If your bank account is levied, your bank is required to hold funds you have on deposit, up to the amount you owe for 21 days. The bank is required to send the money, plus interest in certain cases, to the Service.

We must release a levy if:

1) you pay the tax, penalty, and interest for which the levy was made;
2) the statute of limitations for collection has expired (generally 6 years) prior to service of the levy;
3) the IRS determines the release will help collect the tax;
4) you have an approved, current installment agreement for the tax on the levy, unless you and the IRS have an agreement that a current levy should continue or future levies should be made;
5) the IRS determines the levy is creating an economic hardship, or,
6) the fair market value of the property exceeds the levy and its release would not hinder the collection of tax.

If you bank account is levied, you should contact the specific name and/or telephone number listed on the Notice of Levy to discuss your account. You may also refer to the information under **Taxpayer Assistance** and **Problem Resolution Program (PRP)**, if necessary.

Certain types of property are exempt from levy by Federal law. They are:

1) wearing apparel and school books. (However, expensive items of wearing apparel, such as furs, are luxuries and are not exempt from levy);
2) fuel, provisions, furniture and personal effects not to exceed $1,550 in value (for the head of household) for 1989 and $1,650 for 1990 and later;
3) books and tools used in your trade, business, or profession, not to exceed $1,050 in value for 1989 and $1,100 for 1990 and later;
4) unemployment benefits;
5) undelivered mail;
6) certain annuity and pension payments;
7) certain service connected disability payments;
8) workmen's compensation;
9) salary, wages, or other income subject to a prior judgment for court–ordered child support payments;
10) deposits to the special Treasury fund made by members of the armed forces and Public Health Service employees on permanent duty assigned outside the United States or its possessions;

11) a minimum weekly exemption for wages, salary and other income based on the standard deduction plus the number of allowable personal exemptions divided by 52. In the case of no response, the exempt amount will be computed as if you were married filing separately with one exemption;

12) certain public assistance payments;

13) assistance under the job training partnership act; and

14) a principal residence unless prior written approval of the district director or assistant district director is secured or jeopardy exists.

If you receive a levy on salary or wages, contact the specific name and/or telephone number listed on the Notice of Levy for assistance.

If you disagree on the value placed on the property by the employee making the levy, you can request a valuation by three disinterested individuals.

Seizures and Sales. Any type of real or personal property you own or in which you have an interest (including residential and business property) may be seized and sold to satisfy your tax bill.

After seizure, we give notice to you and the public about the proposed sale. Unless the property is perishable and must be sold immediately, we wait at least 10 days before conducting the sale. Prior to sale, we compute a minimum price that we will accept at the sale and advise you of that amount. If you are in disagreement, you may request a Service valuation engineer or a private appraiser to assist the Internal Revenue Service employee in recomputing minimum price.

A seizure may not be made on any of your property if the estimated cost of the seizure and sale exceed the fair market value of the property to be seized, at the time of the seizure.

No seizure or levy may be made on the date you appear in response to an administrative summons, which is issued to collect unpaid tax, unless jeopardy exists.

You have the right to an administrative review of our seizure action when we have taken personal property that you own which is necessary to the maintenance of your business.

If your property is seized or levied, you should contact the IRS employee who made the seizure or levy for assistance.

Before the date of the sale, we may release the property to you if you pay an amount equal to the amount of the Government's interest in the property, enter into an escrow arrangement, furnish an acceptable bond or make an acceptable agreement for payment of the tax.

You also have the right to redeem your property at any time prior to the sale. Redemption consists of paying the tax due, including interest and penalties, together with the expenses of the seizure.

You may request that the seized property be sold within 60 days. You should contact the IRS employee who made the seizure to assist you with your request. The request will be honored unless it is in the government's best interest to retain the property. You will be advised if your request is not honored.

After the sale, proceeds are applied first to the expense of the levy and the sale; the remaining amount is then applied against the tax bill.

If the sale proceeds are less than the tax bill and expenses of levy and sale, you will still be liable for the remaining unpaid tax. When sale proceeds exceed the tax bill and expenses of levy and sale, we will hold the surplus pending your request for distribution. Unless a person, such as a mortgagee or other lienholder, submits a claim superior to yours,, these excess funds will be credited or refunded to you upon your request.

Real estate may be redeemed at any time within 180 days after the sale by paying the purchaser the amount he/she paid for the property plus interest of 20 % per annum.

100 Percent Penalty Assessments. It is the policy of the Service that the 100 percent penalty assessment (applicable to withheld income and employment (social security and railroad retirement taxes or collected excise taxes) will be used only as a collection tool. It may be asserted immediately upon failure of a taxpayer to pay in response to a notice and demand for payment. It is not necessary that the taxpayer be out of business or without assets to assert the penalty.

The amount of the penalty is equal to 100 percent of the tax required to be collected and paid over. The penalty is computed based on both the withheld income tax and the employee's (but not the employer's) portion of the employment tax, or collected excise tax. In determining the amount of the 100 percent penalty, any payment made on the employer's account is deemed to represent payment of of the non-withheld portions of the liability (including assessed and accrued penalties and interest) unless there was some specific designation to the contrary by a taxpayer at the time of payment. The taxpayer has no right of designation in the case of collections resulting from enforced collection measures. To the extent partial payments exceed the employer portion of the tax liability, they are considered as being applied against the withheld tax portion.

The penalty may be assessed against any person responsible for collecting or paying over income and employment taxes, or paying over collected excise taxes, who willfully fails to do so. Willfulness means intentional, deliberate, voluntary and knowing conduct as distinguished from accidental conduct. Willfulness is considered to be the attitude of a person who, having a free will or choice either intentionally disregards the law or is indifferent to its requirements. There is no requirement that evil intent or personal gain be established. The courts have held, in effect, that the actions of a corporate officer, in permitting withheld tax to be used for operating expenses of the business (whether at the officer's direction or with his tacit approval) is willfulness to a degree sufficient to make that person liable for the 100 percent penalty. If payrolls are met, the inference is that sufficient funds were available to pay the tax, regardless of whether such funds were actually set aside or otherwise specifically identified for tax purposes. As long as a responsible person knew the taxes were due and payable but failed to ensure that they were paid over to the government, there is willfulness to the extent contemplated by the statute.

The responsible person may be an officer or an employee of a corporation, a member or employee of a partnership, a corporate director or shareholder, a volunteer member of a board of trustees of a nonprofit organization, or another person with sufficient control over funds to direct their disbursement. In some situations the penalty may be asserted against a person who is not directly affiliated with the delinquent business, e.g., a member of a bank or other financial institution who furnishes funds to a business and directs how the funds are to be distributed or directs the business not to pay the taxes.

In the case of a corporation, when the person responsible for withholding, collecting, and paying over taxes cannot be determined, the Service will look to the President, Secretary, and Treasurer of the corporation as responsible officers.

If we recommend assertion of the 100 percent penalty against you, you will be given the opportunity to contest the recommendation through a discussion with the employee's group manager. You may request a hearing before the Regional Director of Appeals if you disagree with the district's conclusions. However, once we assert the penalty, the Service can then take collection action against the individual assets of the responsible person(s).

Taxpayer Rights

Publication 1, Your Rights as a Taxpayer. You have the right to be treated fairly, professionally promptly, and courteously by IRS employees. You will receive Publication 1 with the initial notice and demand for payment. You will also receive a copy of this publication at or before the first in–person interview providing that you never received a copy with the initial notice and demand. You can also get this publication by calling 1–(800)–424–FORM (3676).

Information concerning interest on refunds, confidentiality of tax matters, penalty adjustments–reasonable cause, claim procedure for refund or credit, and entry upon private property is included in Publication 1.

Representation. You may represent yourself or you may be represented by an attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service.

The IRS may disclose information regarding your Federal tax matters only to properly authorized persons. This authorization may be given on Form 2848, "Power of Attorney and Declaration of Representative" or Form 2848–D, "Tax Information Authorization and Declaration of Representative," (or any other properly written power of attorney or authorization). Copies of these forms may be obtained at local Internal Revenue Service offices.

Transfer of Your Tax Case. You have the right to request that your tax case be transferred to another district or to another office within a district. Generally, your request will be honored if you have a valid reason, such as a change of address before or during the resolution of your tax case.

Receipts. You have the right to a receipt for any payment you make on your account. You also have the right to receive copies of all contractual arrangements (such as an offer in compromise) which you make with us. You should request a receipt from the IRS office where the payment was made.

Reimbursement of Bank Charges Due to Erroneous Levy. You may be entitled to a reimbursement for fees charged by your bank if the IRS has erroneously levied your account. Your claim must be filed with the IRS within one year after the expense accrues. You should use Form 8546, Claim for Reimbursement of Bank Charges Incurred Due to Erroneous Service Levy, to file your claim.

Offers in Compromise By law you have the right to submit an offer in compromise on your tax bill. The Commissioner of the Internal Revenue Service has the authority to compromise all taxes (including any interest, penalty, additional amount or addition to the tax) arising under the Internal Revenue laws, except those relating to alcohol, tobacco, and firearms.

A compromise can be made on one or both of two grounds—(1) doubt as to the liability of the amount owed or (2)doubt as to your ability to make full payment on the amount owed. The doubt as to the liability for the amount owed must be supported by evidence and the amount acceptable will depend on the degree of doubt found in the particular case. In the case of inability to pay, the amount offered must exceed the total value of the equity in all your assets. The amount offered must also give sufficient consideration to your present and future earning capacity. If your offer is acceptable, we may require a written agreement to pay a percentage of future earnings as part of the offer. A written agreement may also be

required to relinquish certain present or potential tax benefits.

In the case of employment tax liabilities of an employer still in the same business as when the liability sought to be compromised was incurred, favorable consideration may not be given to an offer unless it is equal to the unpaid liability, exclusive of penalties and interest, and only if the financial condition of the employer is such that no greater amount can be collected and current taxes are being paid.

Submission of an offer in compromise does not automatically suspend collection of an account. If there is any indication that the filing of the offer is solely for the purpose of delaying collection of the tax or that delay would negatively affect collection of the tax, we will continue collection efforts.

All forms necessary for filing an offer in compromise, plus additional information regarding the procedure, can be obtained at IRS offices.

Managerial Review of Employee Decisions. If at any step of the collection process you do not agree with the recommendations of our employee, you have the right to discuss the matter with his/her manager. Our employees will tell you the name and location of their manager.

Problem Resolution Program (PRP). PRP is designed for taxpayers who have been unable to resolve their tax problems after repeated attempts to do so using normal procedures. You should first request assistance form our collection employees or their managers. If you are unable to discuss the problem with the employee's manager, or if after such discussions you are unable to resolve the problem, you should contact PRP. PRP provides an avenue of appeal when you believe that the liability is incorrect, a significant matter or event is not being considered in your case, or that your rights have been abridged. To use this service, you should contact Problem Resolution by calling our toll free telephone system or by visiting the district office and asking for PRP.

If you suffer or are about to suffer a significant hardship because of the collection of the tax liability, you may request assistance on Form 911, Application for Assistance Order to Relive Hardship. The Taxpayer Ombudsman or a Problem Resolution Officer will review your application and may issue a Taxpayer Assistance Order (TAO), which may direct the collection function to take action to relieve your hardship. You can get copies of Form 911 in IRS offices or by calling toll–free 1–(800)–424–FORM (3676). An IRS employee can help you complete the form and submit it to PRP.

Taxpayer Assistance

Please keep this notice with your records. It may help you if we ask you for other information. If you have any questions about the rules for filing and giving information, please call or visit any IRS office.

You should use the telephone number shown in your local directory under U.S. Government, Internal Revenue Service, Federal Tax Assistance. If there is not a specific number listed, call toll–free 1–(800)–424–1040. Other phone numbers may be found in the instructions for Form 940 and 941. Please remember hours of service may vary among offices.

You can order publications, tax forms or instructions by calling IRS toll–free at 1–(800)–424–FORM (3676).

☆U.S.G.P.O. 1989 262-164/04244